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Magalie Roman Salas, Secretary
Office of The Secretary
Office of Managing Director
Federal Communications Commission
445 Twelfth Street, SW, TWA325
Washington, DC 20554

**Re: Ex Parte Presentation of Bachow/Coastel,
L.L.C., WT Docket No. 97-112, CC Docket No. 90-6**

Dear Ms. Salas:

Bachow/Coastel, L.L.C. ("Bachow/Coastel"), pursuant to section 1.1206(b)(2) of the Commission's rules,¹ and by its attorneys, herewith files with the Commission an original and one copy of its summary of its *ex parte* presentations at the Commission on Friday, May 5, 2000, and the paper handouts from those meetings. In the first meeting on that date, Bachow/Coastel Managing Director Jay D. Seid, Esq., and its Vice President of Operations, Robert Ivanoff, along with Bachow/Coastel's counsel, Louis H. Dupart, Esq. and Steven J. Hamrick, Esq., met with Bryan Tramont, Esq., Legal Advisor on Wireless and International Matters to Commissioner Harold W. Furchtgott-Roth. In the second meeting that day, the aforementioned Mr. Seid, Mr. Ivanoff, Mr. Dupart and Mr. Hamrick met with the Commission's General Counsel, Christopher J. Wright, Esq.; Joel Kaufman, Esq., Deputy Associate General Counsel and Deputy Division Chief, Administrative Law Division, Office of General Counsel; and Jane Halprin, Esq. of the Office of General Counsel. Bachow/Coastel is filing two additional copies of this summary with the Commission due to the second docket number attached to this proceeding.

¹ 47 C.F.R. § 1.1206(b).

After reviewing the history of the Commission's rulemaking efforts in the above-captioned proceedings, Bachow/Coastel stated that the primary reason for the Commission's proposed rules in its Second Further Notice of Proposed Rulemaking ("Second FNPRM"), which is to provide reliable cellular service in the coastal areas of the Gulf of Mexico,² is no longer at issue, because licensees currently provide reliable cellular service in those geographic areas. Developments since the first incarnation of this proceeding in 1993 have resolved any service reliability issues. For instance, Bachow/Coastel has doubled the number of cell sites that it operates in the Gulf of Mexico in the last three years, and the A Block cellular licensee in the Gulf of Mexico has implemented three land-based collocation agreements. Clearly, the Gulf-based cellular licensees possess the economic incentive to provide high-quality service in high-traffic areas in the Gulf of Mexico, and unlike the land-based cellular licensees operating around the Gulf of Mexico, have no incentive to warehouse spectrum.

Considering these developments over the past seven years, Bachow/Coastel posed a question to the Commission: why continue with this rulemaking proceeding? Bachow/Coastel proposed that there are more efficient methods to address the cellular issues in the Gulf of Mexico than an industry-wide rulemaking, especially considering that there are only 12 carriers that are real parties in interest in cellular matters involving the Gulf of Mexico. Further, the Wireless Telecommunications Bureau (and its predecessor) have not attempted to negotiate or mediate a compromise between the Gulf-based and land-based cellular licensees in the seven-year history of this proceeding. Again, the rules proposed in the Second FNPRM are unnecessary, as the current rules provide the mechanisms to address temporary service deficiencies, such as Special Temporary Authority and Interim Operating Authority. Land carriers are availing themselves of these mechanisms today. Bachow/Coastel did note that, because of a Presidential proclamation, service along the Florida coast is unique because there are no oil or gas platforms in that territory; yet, the Florida coast involves only five licensees, and there are current regulatory mechanisms that have permitted reliable cellular service off the Florida coast, such as Special Temporary Authority and *de minimis* service area boundary extensions.

Bachow/Coastel also cited serious legal issues raised by the Second FNPRM's proposed rules. First, the proposed rules do not address the mandate of the United States Court of Appeals for the District of Columbia Circuit's ("D.C. Circuit") decision in *Petroleum Communications, Inc. v. Federal Communications Commission*, 22 F.3d 1164 (D.C. Cir. 1994) ("*Petroleum*"), namely: that limiting Gulf licensees to areas of actual reliable service was arbitrary and capricious; to not apply the same licensing standards to both Gulf-based licensees and land-based licensees without explaining why the Commission would suddenly deviate from its longstanding

² See Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico, 65 *Fed. Reg.* 24168-24169 (April 25, 2000).

policy of treating Gulf carriers differently than land-based carriers; and take into consideration the unique nature of operations for Gulf-based licensees. The D.C. Circuit's decision in *Petroleum* required the Commission to address the unique characteristics of the Gulf-based licensees, yet the proposed rules automatically strip a Gulf-based carrier's license area every time an oil platform relocates. The Second FNPRM does not address these issues. Furthermore, the proposed rules improperly modify the Gulf-based licensees' licenses by taking 12 miles of their licensed territory all around the Gulf of Mexico, in a rulemaking that is not one of general applicability. The adoption of the rules proposed in the Second FNPRM raises serious legal questions; indeed, a continuation of this rulemaking proceeding will likely lead to litigation.

Bachow/Coastel noted that the current Commission rules are effectively dealing with carrier problems in the Gulf of Mexico, and are spurring the expansion of coverage throughout the Gulf of Mexico. For example, Bachow/Coastel has been involved in a complaint proceeding that was time-consuming and expensive, and chilled its efforts to provide expanded service in its license area, the Gulf of Mexico. However, the Enforcement Bureau's enforcement of the *current rules* has removed any doubts about moving forward with new expansion and allowed Bachow/Coastel to use its resources to provide more coverage in the Gulf of Mexico.

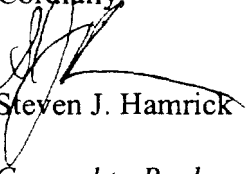
Furthermore, Bachow/Coastel recounted how the presence of the Second FNPRM stymied negotiations with land-based licensees for extension agreements and settlement agreements. Instead of dealing with their co-channel, adjacent licensees as they would in non-Gulf matters, the land-based carriers simply raised the fact that they were waiting for the issuance of the proposed rules so that they would never have to deal with the Gulf-based licensees. This prevented agreements between the Gulf-based licensees and the land-based licensees, and effectively restricted coverage in the Gulf coastal areas. Significantly, the three collocation agreements reached by the A Block carriers preceded the Second FNPRM.

Bachow/Coastel raised the possibility of the Commission conducting its own fact-finding study to determine whether there are service reliability issues along the Gulf Coast, and the possibility that the Commission might form two industry working groups to provide recommendations to the Commission (one group would include licensees with Florida coast license areas, and the other group would deal with the remaining Gulf coastal areas). However, the most effective resolution by the Commission, considering that there is no longer any need for the Second FNPRM's proposed rules and that any Commission Order resulting from those proposed rules will almost certainly be litigated at the D.C. Circuit, would be to terminate this rulemaking proceeding without disturbing the current rules.

Magalie Roman Salas
May 8, 2000
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If you have any questions concerning this filing, or if you require additional information, please do not hesitate to call.

Cordially,



Steven J. Hamrick

Counsel to Bachow/Coastel, L.L.C.

Attach.

*Proceedings of the Service
and the Department of the Interior*

Department of the Interior

May 5, 2000

Department of the Interior

Timetable

Unserviced Area Rulemaking for the
Gulf of Mexico

January 1993

Third Circuit Court of Appeals

Decision

May 1994

Further Proposed Rulemaking

March 1997

Further Proposed Rulemaking

April 2000

**The underlying premise for the proposed
rulemaking has resolved itself over the past 7
years.**

There are more efficient methods to address this issue

- This is not an industry-wide issue

- There are only 12 carriers are the real parties of interest

The Bureau has not attempted to negotiate or mediate a compromise in 7 years

The current rules provide opportunities to address temporary service deficiencies

STA (Special Temporary Authorizations)

IOA (Interim Operating Authority)

Country to the rulemaking's mutual conclusion.

• The public is currently receiving reliable service in coastal areas

The Gulf carriers have economic incentive to provide quality service in high traffic areas

No benefit to warehouse spectrum

Bachow/Coastel has doubled the number of cell sites in 3 years

3 A-band land based carriers have implemented land based co-location systems

If there is no significant issue, why have rulemaking for rulemaking's sake?

The proposed rules do not address the court remand

The proposed rules improperly modify the Gulf carriers licensed territory

An extended rulemaking processes will likely result in the same parties seeking court intervention and is a waste of resources

There are no oil/gas platforms off the Florida Coast.. Presidential proclamation

There are regulatory measures under existing rules which result in reliable coverage all along the Florida Coast

STA

de minimis Extensions

Florida Coast only involves a total of 5 carriers

Gulf Carriers must continuously deal with interference from land carriers

Our experiences with GTE over interference complaints has been time consuming, expensive and exposed us to delaying and bullying tactics.

Effectively, if a Gulf Carrier loses a platform (or a lease) it automatically is stripped of coverage area

**Form two different Industry Working
Groups to provide recommendations to the
FCC**

Florida Coast

Carriers with Florida Coast territory

Remaining Gulf Coast Areas

**Initiate FCC staff fact-finding to determine
whether there are cellular issues along the
Gulf Coastline**